

## ANALYSIS

This ordinance amends the water pipeline franchise granted by Ordinance No. 2003-0086F to Lake Elizabeth Mutual Water Company, to extend the term of the franchise for fifteen (15) years, through February 8, 2034, and make other minor revisions to clarify certain terms and conditions of the franchise.

MARY C. WICKHAM  
County Counsel

By

GRACE V. CHANG  
Principal Deputy County Counsel  
Public Works Division

GVC:ck

Requested: 10/09/18  
Revised: 10/23/18

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending Ordinance No. 2003-0086F, a water pipeline franchise granted to Lake Elizabeth Mutual Water Company.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Section 1 of Ordinance No. 2003-0086F is hereby amended to read as follows:

Section 1. Franchise Term, Grant.

A. The right, privilege, and franchise is granted to Lake Elizabeth Mutual Water Company ("Franchisee"), and its successors and assigns, for ~~the~~a period of fifteen (15) years, ~~beginning on~~through February 98, 20042034, ~~the effective date of this franchise,~~ to lay, construct, reconstruct, maintain, operate, renew, repair, change the size of, remove, or abandon in place, pipes and pipelines for the transportation and distribution of water, waste water, mud, steam and other liquid substances, ~~including those substances that are generally accepted as appropriate for the treatment of water,~~ excluding any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601 et seq., as it may hereafter be amended; the "Federal Water Pollution Control Act," 33 U.S.C. 1251 et seq., as it may hereafter be amended; and the "Solid Waste Disposal Act," 42 U.S.C. 6901 et seq., as it may hereafter be amended, (provided, however, that ~~this~~these exclusions shall not apply to substances in such amounts that are generally accepted as appropriate for the treatment of water), together with all manholes, valves, cathodic protection systems, appurtenances, and service

connections necessary or appropriate for the operation of said pipes or pipelines, including poles, conduits, wires, cables, ~~or~~and other appurtenances and equipment for telegraph or telephone lines, or both, necessary or appropriate for ~~the Franchisee's business operations~~ in, under, along, or across any and all highways, as defined in Section 16.36.080 of the Los Angeles County Code, now or hereafter dedicated to public use in the unincorporated territory of the County of Los Angeles ("County"), State of California.

...

**SECTION 2.** Section 2 of Ordinance No. 2003-0086F is hereby amended to read as follows:

Section 2. Consideration, Payment of Fees.

As consideration for the franchise granted, ~~the Franchisee~~ shall pay annually, within three (3) months and fifteen (15) days after the end of each calendar year, during the life of the franchise, from the effective date of this franchise, to the County in lawful money of the United States the following:

...

B. In addition to the foregoing annual payments, ~~the Franchisee~~ shall also pay:

1. The ~~Chief Administrative Officer~~Director of the Department of Public Works ("Director"), within thirty (30) days after the adoption of this ordinance, a ~~one-time granting-fee~~ of Five Thousand Dollars (\$5,000).



...

**SECTION 3.** Section 3 of Ordinance No. 2003-0086F is hereby amended to read as follows:

**Section 3. Reports.**

The Franchisee shall during the life of the franchise:

A. File with the County Auditor-Controller and the Chief Administrative Officer ("CAO"), Director of Real Estate, within three (3) months and fifteen (15) days after the end of each calendar year, or fractional calendar year ("franchise report period"), following the effective date of the franchise, one (1) copy to each of a report verified under oath by either the Franchisee or a duly authorized representative of the Franchisee, showing the total gross receipts of the Franchisee for the immediately preceding franchise report period, received or accrued in connection with the furnishing of the commodity or service arising from the use or operation of the franchise, together with such additional data as is necessary in the opinion of the County Auditor-Controller to calculate or verify the calculation of the annual payments required by Section 2.

B. Show, in the report prepared pursuant to 3.A above, Franchisee shall also show any change in franchise footage since the end of the most recent prior franchise report period, if any, segregating such footage as to new main lines laid, old main lines removed, old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduit laid for wires, cables, telegraph or telephone lines, old conduit removed, old conduit abandoned in place; and the diameter of such conduits laid, removed, and/or abandoned in place;

and the footage and internal diameter of main lines in territory annexed or incorporated since the end of the same period.

C. File with the Director ~~of the County Department of Public Works~~, within three (3) months after the end of each franchise report period, a report, in duplicate, showing the permit number of each permit obtained for the installation of new main lines and conduits during that franchise report period, together with the length and size of said main lines and conduits.

**SECTION 4.** Section 5 of Ordinance No. 2003-0086F is hereby amended to read as follows:

Section 5. Insurance, Indemnification, and Bonding.

~~The Franchisee~~ shall meet the following indemnification, insurance, and bonding requirements:

...

C. Without limiting Franchisee's indemnification of County, Franchisee shall provide and maintain at its own expense, during the term of this franchise, the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the County and shall be primary to and not contributing with any other insurance maintained by the County. Certificate(s), or other evidence of coverage, including certified copies of additional insured endorsement(s) and notice of cancellation endorsement(s), shall be delivered to the ~~Chief Administrative Office, Real Estate Division, Attn: Franchise Section, 222 South Hill Street, 3rd Floor, Los Angeles, California 90012~~ Director, Attn: Survey/Mapping & Property Management Division,



900 South Fremont Avenue, Alhambra, California 91803. Such certified copies, certificate(s), or other evidence of coverage shall specifically identify this franchise and shall contain the express condition that the County is to be given written notice by registered mail at least thirty (30) days in advance of any modification, non-renewal, or cancellation of any program of liability insurance and at least thirty (30) days in advance of any modification, non-renewal, or cancellation of any program of workers' compensation or other insurance required by this Section 5.

...

D. Franchisee shall furnish the CAO Director, at the location specified in subsection 5.C, within thirty (30) days of the adoption of this ordinance, either certified copies of the policies required by subsection 5.C or a certificate of insurance for each of said policies executed by the company issuing the policy, certifying that the policy is in force.

E. 1. Within five (5) days following the effective date of this ordinance, Franchisee shall provide to the CAO Director, at the location specified in subsection 5.C, a faithful performance bond in the sum of not less than Fifty Thousand Dollars (\$50,000), payable to the County and executed by a corporate surety acceptable to the County and licensed to transact business as a surety in the State of California. Such bond shall be conditioned upon the faithful performance by Franchisee of the terms and conditions of the franchise and shall provide that, in case of ~~any~~the breach of any condition of this franchise, the whole bond amount, or any portion thereof, shall be deemed to be forfeited and shall be payable to the County by the principal and sureties

of the bond. Throughout the term of this franchise, Franchisee shall maintain the bond in the amount specified herein. Within ten (10) business days after receipt of notice from the County that any amount has been withdrawn from the bond, as provided in this section, Franchisee shall restore the bond to the amount specified herein.

2. The faithful performance bond shall continue in force for one (1) year following the CAO Director's approval of any sale, transfer, assignment, or other change of ownership of the franchise, or of the expiration or termination of this franchise. The CAO Director may release said bond prior to the end of the one (1) year period upon satisfaction by Franchisee of all the obligations under the franchise.

...

**SECTION 5.** Section 6 of Ordinance No. 2003-0086F is hereby amended to read as follows:

**Section 6. Transfers and Assignments.**

A. Franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof, except with the written consent of the CAO Director and after payment of a transfer fee as detailed in subsection 6.G. As used in this section, "transfer" includes stock transfer and "control" includes actual working control in whatever manner exercised. Consent shall not be required for involuntary transfers, as provided in Section 16.52.140(B) of the County Master Pipeline Franchise Ordinance.

B. Franchisee shall inform the CAO Director of any pending sale, transfer, assignment, lease, hypothecation, placing in trust, or change in control, except as



excluded in subsection 6.E, and shall provide all documents requested by the CAO Director as set forth in subsection 6.F on which the sale, transfer, assignment, lease, hypothecation, trust, or change in control is predicated. Upon receipt of preliminary approval from the CAO Director, Franchisee may proceed to consummate the transaction, subject to the provisions of subsection 6.C.

C. Franchisee shall file with the CAO Director, within thirty (30) days of the effective date of any sale, transfer, assignment, lease, hypothecation, trust, or change in control, a certified copy of the duly executed instrument(s) ~~which~~that officially evidences such action. After reviewing the final transfer documents, the CAO Director may administratively approve the transfer of the franchise rights. Consent to any such transfer shall only be refused if the CAO Director finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed transferee is lacking in experience and/or financial ability to meet the franchise obligations. If such duly executed instrument(s) is not filed with the CAO Director within the ~~thirty~~(30)-day period described above, or if the final documents are different from the preliminary documents, then upon expiration of said thirty (30) days, the CAO Director may notify Franchisee and the proposed transferee that the transfer is not deemed to be in force and effect. The CAO Director may then administratively determine that the franchise is forfeited. If it is determined that the franchise is forfeited, and the Board may, without notice, by ordinance, repeal the franchise.

D. As a condition to the granting of consent to such sale, transfer, assignment, lease, hypothecation, placing in trust, or change in control, the Board may



impose such additional terms and conditions upon the franchise and upon the proposed transferee ~~which~~as the ~~CAO~~Director recommends or the Board deems to be in the public interest. Such additional terms and conditions shall be expressed by ordinance. Nothing contained herein shall be construed to grant Franchisee the right to sell, transfer, assign, lease, hypothecate, place in trust, or change control of the franchise or any part thereof, except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of Franchisee, or otherwise, except as provided in Section 16.52.140(B) of the County Master Pipeline Franchise Ordinance for involuntary transfers.

E. Notwithstanding the foregoing, shareholders, partners, and/or any other person or entity owning an interest in Franchisee may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein; however, in the event any such sale, transfer, exchange, assignment, divestment, or other change is effected in such a way as to give control of, or a twenty-five percent (25%) or more interest in, Franchisee to any person or persons, corporation, partnership, or legal entity other than the controlling interest therein on the effective date of the franchise or the effective date of the last assignment, sale, transfer, or other action ~~which~~that required the Board's or ~~CAO~~Director's consent, consent thereof shall be required as otherwise provided in this Section 6, which consent shall not be unreasonably withheld.

F. The proposed transferee shall submit an application to the ~~CAO~~Director, which shall contain, but is not limited to:

...

2. A current financial statement which has been audited by a certified public accountant demonstrating to the satisfaction of the CAO Director that the proposed transferee has the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years (if in existence for less than three (3) years, then for such period of existence), and statement of changes in financial position.

...

4. Other information that may be required by the CAO Director to assess the capability of the proposed transferee to operate and maintain the franchise.

G. A transfer fee shall be submitted with the proposed transferee's request for the County's consent to any action described in subsection 6.A and shall be determined as follows:

...

3. In the event that the costs to process the proposed transfer application exceed the fees detailed above, the proposed transferee may be required to pay any additional costs incurred by the County in processing the proposed transferee's request for consent to sale, transfer, transfer of stock, assignment, lease, hypothecation, trust, or change in control of the franchise. Such costs may include the costs incurred for hiring consultants to assist in evaluating the application. Such costs shall be paid by the proposed transferee prior to final consideration of the request by the CAO Director, or the Board, as applicable.



**SECTION 6.** Section 9 of Ordinance No. 2003-0086F is hereby added to read as follows:

Section 9. Franchise Operative Date.

The operative date of this franchise Ordinance shall be February 9, 2019.

[LAKEELIZFRNGCCC]

